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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/677,029 | 10/01/2003 | Douglas L. Goedeken | P6187US | 9524 |
| 7590 KAGAN BINDER, PLLC Maple Island Building, Suite 200 221 Main Street North Stillwater, MN 55082 | | | | |
| 07/06/2009 | | | | |
| EXAMINER | | | | |
| TRAN LIEN, THUY | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/677,029

Applicant(s)

GOEDEKEN ET AL.

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 10, 11, 21-25 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 10, 11, 21-25, 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 28-32 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

New claim 28 recites a ratio of flour to water in the range from 1.67 to 1.82. The range claimed does not have support in the specification. The examples show specific values but the range includes values that are not disclosed. There is no disclosure of 1.69, 1.70 etc...

Claims 1-2, 10-11, 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyn et al.

Freyn et al disclose an unproofed frozen dough comprising an acidic active agent, a basic active agent and yeast in amount of 2-20% . The amount of basic leavening agent is from 2.5-4% based on 100% flour and the amount of acidic leavening agent is enough to neutralize the basic ingredient. Example 1 shows 3.55% basic agent and 3.55% acidic agent. The dough products include dinner rolls, bread sticks, cinnamon rolls. The acidic active agent can be selected from the ingredients listed on column 2 lines 50-60. The frozen dough does not need to be thawed or proofed prior to baking; however, the dough may be thawed and proofed without detracting from the quality of a baked product. The method comprises the step of determining amount of ingredients to form the dough. (see col. 2,3 and col. 5 and the examples)

The amounts of acidic active agent and basic active agent do not define over Freyn et al. because they disclose an amount of 2.5-4% basic active agent based on 100% flour; thus, the amount falls within the range claimed. The acidic agent is required to completely neutralize the basic agent; thus, it is inherently in the same range or a little higher than the basic agent. Thus, the acidic active agent also falls within the claimed range. . Example 6 shows a ratio of 1.70 which falls within the claimed range in claim 28. The reference discloses all the limitations claimed. The property of being thawed and proof in a retarder at temperature in the range of 32-46 degree is inherent in the Freyn et al dough because it is the same dough containing the same ingredients as claimed. Furthermore, the limitation of " the dough can proof at retarder condition" is not a positive limitation; it is reciting what the dough can do, which is similar to intended use which does not determine the patentability of the product. The claims are directed at an unproofed frozen dough containing the recited ingredients and Freyn discloses such dough.

Claims 3,6, 21- 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyn et al.

Freyn et al do not disclose encapsulated basic active, the raw specific volume as claimed and the use of fresh crumbled yeast .

Encapsulated leavening agent is well known in the art as exemplified in the Moder et al reference submitted by applicant. It would have been obvious to one skilled in the art to use encapsulated basic agent when desiring to prevent the action between the leavening acid and leavening base until baking time. It would also have been

obvious to use fresh crumbled yeast when desiring a fresh ingredient. As to the specific volume, this parameter can vary depending on the several factors including the amount of leavening agents used, the type of product, the mixing time, the proportions of ingredients used etc.. It would have been obvious to one skilled in the art to determine the appropriate raw specific volume depending on the type of product and the specific texture and taste wanted. Such determination is within the skill of one in the art through routine experimentation. Claims 24-25 are included in the 103 rejection because they depend from claim 6 which is rejected under 103 because Freyn et al do not disclose the yeast used is fresh crumbled yeast. However, all the limitations in claims 24-25 are taught in Freyn et al. The acid leavening agents in Freyn et al include high solubility and low solubility agents and the amounts are within the range claimed. Freyn et al disclose the amount of basic ingredient falling within the range claimed in claim 21. However, Freyn et al do not disclose fresh crumble yeast.

In the response filed 3/20/09, applicant comments that Freyn et al do not disclose the combination features of claim 1. Freyn et al do disclose the combination of claim 1 because they disclose amounts of basic active agent, acidic active agent falling within the claimed ranges and the acidic agent includes monocalcium phosphate and sodium acid pyrophosphate as claimed.

With regard to the 103 rejection, applicant comments the Freyn et al reference is not believed to suggest the level of basic and acidic agents claimed. Freyn et al do not have to suggest the level because they disclose the same level. Applicant further argues the Freyn et al dough are specifically formulated to avoid leavening and

proofing. The Freyn et al disclose the same dough as claimed; thus, it inherently has the same properties as claimed in absence of evidence showing otherwise.

Furthermore, Freyn et al disclose the dough may be thawed and proofed.

Applicant's arguments filed 3/20/09 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 29, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794